

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: CROSSING OF RAILROAD RIGHTS-OF-WAY	DOCKET NO. RMU-02-7
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ORDER ADOPTING RULES

(Issued May 2, 2003)

Pursuant to the authority of Iowa Code §§ 17A.4, 476.1, 476.1A, 476.1B, and 476.27, the Utilities Board (Board) adopts the rules attached hereto and incorporated herein by this reference. These rules adopt a new chapter 199 IAC Chapter 42 to address issues surrounding public utility crossings of railroad rights-of-way.

Written and/or oral comments in this proceeding were received from the Consumer Advocate Division of the Department of Justice, Qwest Corporation, United Cities Gas Company, a division of Atmos Corporation, Iowa-American Water Company, the Small Utility Group, the Joint Utility Group, the Iowa Rural Water Association, the Mahaska Rural Water Association, and the Iowa Railroads. The comments in the proposed rules were favorable to the concept of establishing rules for public utility crossings of railroad rights-of-way, although the commenters offered specific suggestions or revisions to the proposed rules.

The adopted rules are largely the result of an extensive collaboration involving various public utilities, utility-industry groups, and railroads. However, consensus

was not reached in all areas and the Board encourages the railroads and utilities to continue their discussions. If consensus can be reached in some of the unresolved areas, such as specification exhibits and insurance, a joint petition to modify the rules may be filed. The Board understands the utilities and railroads plan to meet soon to discuss specification exhibits.

The Board views the adopted rules as a work-in-progress and anticipates that there may be a follow-up rule making in the next few months to consider changes to the adopted rules. However, the Board believes it is important to adopt rules now, rather than renote the entire chapter at this time, so that both railroads and public utilities will have some guidance for the upcoming construction season in any situation in which agreement cannot be reached. Section 476.27(3)"a" specifically provides that "rules adopted by the board shall not prevent a railroad and a public utility from otherwise negotiating the terms and conditions applicable to a crossing or the resolution of any disputes relating to such crossing."

There were several comments regarding the time frames for the "notice and go" or "pay and go" concept embodied in the rules. The Board will not reduce the 35-day period the rules provide for the railroad to review the notice and specification exhibit, see subrule 42.3(4). This time frame was a compromise between the positions of the railroads and the utilities, and a shorter time period may not give the railroads adequate time to review the specification exhibit and complete their process. The Board will not adopt an exception for exigent circumstances. These

circumstances are best worked out in conversations between the railroad and utility involved.

While several utilities wanted a shorter time frame from the time of notice to the beginning of construction, they also wanted a longer time frame to commence construction. The 120-day period proposed in subrule 42.3(4) will be retained. If construction is not completed in that time, it is not unreasonable to require another notice, specification exhibit, and fee to be paid so that the railroad can determine if circumstances have changed since the original notice was provided.

The proposed insurance requirements also generated substantial comment. In this area, the Board will continue to examine the issues but will not change the requirements at this time, except to eliminate the 50-foot exception in subrule 42.9(1). (Tr. 55). The Board encourages the railroads and utilities to resume discussions on insurance requirements. While the Board sympathizes with the arguments of the small utilities, a case has not been made that the risks associated with their crossings are less than the risks associated with crossings by larger utilities. (Tr. 33). In addition, the railroads indicated their willingness to work with the small utilities, as they have in the past, with respect to accommodating the particular insurance needs of the small utilities. (Tr. 58).

The Board does not believe the option of allowing the utilities to determine the coverage they will maintain would provide adequate protection to the railroads. Also, the Board at this time will not change the self-insurance requirements, as both total assets and investment grade are important in evaluating the strength of a company.

It is important to note with respect to all these issues that an individual utility and individual railroad are free to negotiate their own agreement with respect to any particular crossing. A utility and railroad could also negotiate different terms than that provided for in the rules as to self-insurance requirements.

Subrule 42.5(3) provides that, upon the utility's request, the railroad shall provide a statement of reasons for requiring a relocation of facilities. The adopted rule will include a 15-day time frame for this statement to be provided. The prohibition against liens in rule 42.12 will be expanded so that it also applies to the railroads with respect to the utilities' property.

Both the railroads and the utilities agreed that the rules should contain forms for the specification exhibit, which would be submitted along with the notification of intent to construct provided for in subrule 42.3(1). Various proposed specification exhibits were submitted, but there was no agreement on the forms to use. The railroads and the utilities plan to meet again to attempt to resolve their differences with regards to the specification exhibits. The Board is not able to adopt any of the various exhibits submitted. In general, the forms proposed by the utilities do not provide sufficient information, while the forms submitted by the railroads include requirements not provided for in the rules. In addition, the railroads did not submit an exhibit form for uncased crossings of railroad rights-of-way by natural gas pipelines, a common construction method favored by some utilities for corrosion control reasons and permissible under American Railway Engineering and Maintenance-of-way Association (AREMA) standards. Without a specification exhibit for such crossings,

any uncased crossing would likely be a special circumstance. At the oral presentation, the Iowa Railroads indicated such crossings that comply with AREMA standards would be acceptable. (Tr. 104-06).

Rather than adopt specific specification exhibits in the rules, the Board will require in subrule 42.3(1) that exhibit forms complying with the Board's rules must be submitted by the railroads for Board review and approval. The railroads will be required to make this filing on or before August 1, 2003. Any future revisions would also be subject to Board review and approval. This will allow discussions to continue between the railroads and utilities with respect to the use of standard forms.

The Joint Utility Group expressed concern that the railroads may require a separate application and fee for each wire of a multiple-line overhead crossing. This is a strained interpretation of the rules and the rules will not be modified to address this concern. There is a standard fee per crossing, no matter how many wires are on the poles. However, if a line is subsequently rebuilt or additional lines are added to the poles, another crossing fee would have to be paid because the railroad would have to undertake an engineering review of the revisions.

The Joint Utility Group's concern extends to underground crossings. The language in subrule 42.3(3) is intended to permit only such wires as are included on the specification exhibit and not to allow unrestricted future installation of additional or different facilities. The Board will add language to the proposed rule to clarify that multiple wires to be contained within a single conduit may be combined on a single

exhibit and that both cased and uncased natural gas pipelines shall be provided for on the specification exhibit form or forms.

Paragraphs 42.6(3)"f" and 42.7(2)"c" address the issue of horizontal drilling. In meetings between the utilities and the railroads that occurred prior to the commencement of the rulemaking and were attended by the Board's engineering staff, an effort was made to distinguish between two types of drilling. The first involves boreholes using water jets or other techniques that might leave cavities. The second involves horizontal directional drilling (HDD), which uses a pumped bentonite "drilling mud" but does not work by eroding a tunnel, and which was believed at that time to be acceptable to all parties. The Iowa Railroads, however, subsequently objected to HDD, contending it can destabilize the railroad subgrade and was the cause of a major derailment. The Joint Utility Group disputes the contention that HDD activity caused the accident and no persuasive evidence regarding the cause of the accident was presented at the oral presentation or written comments.

The Iowa Railroads did not dispute a statement made at the oral presentation that HDD "has been a very common technique of installing facilities under railroads, and in the past railroads have taken no particular exception to it." (Tr. 100). An Iowa Rural Water Association representative testified that HDD is used 95 percent of the time. (Tr. 104). AREMA standard 5.1.2.b states that "[p]ipelines shall be installed under tracks by boring or jacking, if possible." These terms are not defined, but nothing was found in the pipeline sections that would prohibit or place unusual

restrictions on boring done using HDD. The record does not support a finding that HDD is an unsafe or undesirable crossing method or that each instance of this widely used and previously uncontested method should be a special circumstance warranting case-by-case consideration, based on one unsubstantiated and disputed incident.

The Iowa railroads proposed other rule language stating that HDD will be permitted by the railroads on a case-by-case basis “when the techniques comply with railroad requirements for such.” The Board has reservations about the “case-by-case” approach because it could allow inconsistent or arbitrary decisions. In addition, the term “railroad requirements” is too vague a term in the absence of information on what those requirements might be. If the Iowa Railroads believe that particular engineering provisions or technical specifications should apply to HDD crossings, the group is invited to propose them to the Board. However, the reference in paragraph 42.7(2)"c" to “horizontal drilling” will be changed to “horizontal directional drilling,” the standard term of art. The rule’s prohibition against bored crossings using water jetting or other techniques that might leave cavities will remain.

The Iowa Railroads noted that paragraph 42.7(1)"c" would allow polyethylene (PE) gas pipe operating at 125 psig, while the current federal pipeline safety standards (49 CFR 192.123) limit PE pipe to 100 psig. The 125 psig value was proposed in anticipation of a federal rule change that would increase the allowable pressure. However, the federal Office of Pipeline Safety has not yet issued a decision in that rule making. The rule cannot be adopted as proposed because it

would conflict with federal regulations. The reference to a specific pressure is unnecessary and will be deleted from the first sentence of the subrule. Limitations on pressure will, therefore, default to whatever value is provided in the federal regulations.

The Joint Utility Group raised a question as to whether the reference to 34,500 volts in subparagraph 42.6(2)"c"(3) should have been 345,000 volts. (Tr. 22). Based on the Board's understanding of this record, 34,500 volts is the correct reference, but the Board notes this limitation only applies to towers, not poles.

Consumer Advocate urged that rule 42.22 be revised to provide for prefiled testimony. The proposed rule stated that prefiled testimony will not be used unless ordered by the presiding officer or requested by the railroad and public utility involved or Consumer Advocate. The Board will not revise the proposed rule. Because these issues may often require expedited treatment, flexibility should be maintained to decide these cases without prefiled testimony, where appropriate. The Board will, however, adopt Consumer Advocate's suggestion and strike language in rule 42.23 that provides that discovery disputes will not be viewed favorably. Any discovery disputes should be resolved on the merits and not on the basis of a preconceived bias.

IT IS THEREFORE ORDERED:

1. A rule making proceeding, identified as Docket No. RMU-02-7, is adopted.

2. The Executive Secretary is directed to submit for publication in the Iowa Administrative Bulletin a notice in the form attached to and incorporated by reference in this order.

UTILITIES BOARD

/s/ Diane Munns

/s/ Mark O. Lambert

ATTEST:

/s/ Judi K. Cooper
Executive Secretary

/s/ Elliott Smith

Dated at Des Moines, Iowa, this 2nd day of May, 2003.

UTILITIES DIVISION [199]

Adopted and Filed

Pursuant to Iowa Code sections 17A.4, 476.1, 476.1A, 476.1B, and 476.27 (2003), the Utilities Board (Board) gives notice that on May 2, 2003, the Board issued an order in Docket No. RMU-02-7, In re: Crossing of Railroad Rights-of-Way, "Order Adopting Rules." The Board is adopting a new chapter, 199 IAC 42, to address recent legislation related to the fees and procedures for public utilities crossing railroad rights-of-way with their wires and pipelines. This legislation, Iowa Code section 476.27 (2003), allows for crossing of railroad rights-of-way subject to certain terms and conditions. While the legislation sets a standard crossing fee, that fee can be exceeded if special circumstances exist. In addition, the legislation provides that a railroad and public utility may agree to terms and conditions that differ from those provided for in Iowa Code section 476.27(3) or the rules.

On July 9, 2002, the Board issued an order in Docket No. RMU-02-7 to consider the new chapter. Notice of Intended Action for the proposed rule making was published in IAB Vol. XXV, No. 3 (8/7/02), p. 201, ARC 1852B. Written or oral comments were submitted by the Consumer Advocate Division of the Department of Justice, Qwest Corporation, United Cities Gas Company, a division of Atmos Corporation, Iowa-American Water Company, the Small Utility Group, the Joint Utility Group, the Iowa Rural Water Association, the Mahaska Rural Water Association, and the Iowa Railroads. An oral presentation was held on November 5, 2002. Some

entities or groups also filed supplemental written comments following the oral presentation.

The adopted rules are the result of an extensive collaboration involving various public utilities, utility-industry groups, and railroads. While much agreement was reached, consensus was not reached in all areas. The adopted rules attempt to reflect agreement where it was reached and, where consensus was not attained, the rules attempt to balance the interests of the railroads and the utilities with the specific language set forth in the legislation. The participants are continuing to attempt to reach agreement on some areas of dispute, particularly specification exhibits. The Board understands a meeting is scheduled in May 2003 to discuss these issues. The Board is also continuing to review certain aspects of the rules and comments and anticipates that there may be a follow-up rule making in the next few months to propose changes to the adopted rules. However, the Board believes it is important to adopt rules now, rather than renote the entire chapter, so that both railroads and public utilities will have some guidance for the upcoming construction season.

The rules provide that the railroads should file, on or before August 1, 2003, specification exhibits for Board review and approval. If the railroads and utilities reach agreement, the Board may propose amending the rules so that the specification exhibits will be included in the rules.

The Board will not detail here the reasons for the changes from the proposed rules because those reasons have been delineated in the "Order Adopting Rule Making," issued simultaneously with this notice. This order is available at the Board's website, <http://www.state.ia.us/iub>. The order is also available in hard copy for

review or purchase at the Board's Records Center, 350 Maple Street, Des Moines, Iowa 50319-0069; telephone (515) 281-5563.

The changes to the noticed rules are in response to the comments. The Board finds that no additional notice is required. The Board invites participants to petition the Board for rule changes, particularly if additional agreement can be reached on specification exhibits or other aspects of the rules.

The Board does not find it necessary to adopt a separate waiver provision in this rule making. The Board's general waiver provision in 199 IAC 1.3 (17A,474,476,78GA,HF2206) is applicable to these rules. In addition, Iowa Code section 476.27 specifically allows a railroad and public utility to agree on different terms.

These rules are intended to implement Iowa Code sections 476.1, 476.1A, 476.1B, and 476.27, and will become effective on July 2, 2003.

The following **new** chapter is adopted.

CHAPTER 42 CROSSING OF RAILROAD RIGHTS-OF-WAY

199—42.1(476) Definitions. The following words and terms, when used in these rules, shall have the meanings set forth in Iowa Code section 476.27: "board," "crossing," "direct expenses," "facility," "public utility," "railroad" or "railroad corporation," "railroad right-of-way," and "special circumstances."

In addition, as used in this chapter, the following definitions shall apply:

"Complainant" means a person who complains to the board by written complaint regarding any of the issues identified in Iowa Code section 476.27(2) or these rules.

"Petitioner" means a person who files a written petition with the board seeking a determination of special circumstances pursuant to Iowa Code section 476.27(4).

"Respondent" means a person against whom a complaint or petition is filed.

199—42.2(476) Applicability and purpose. These rules provide terms and conditions for the crossing of railroad rights-of-way by public utilities. However, these rules shall not prevent a railroad and public utility from negotiating other terms and conditions applicable to a crossing or agreeing to a different dispute resolution mechanism than that provided for in Iowa Code section 476.27 and these rules. These rules do not apply to longitudinal occupancy of railroad right-of-way, but only to the crossing of railroad right-of-way.

199—42.3(476) General notice and specification exhibit requirements and payment of fee

42.3(1) Notice and exhibit. Anytime a public utility intends to construct a crossing across railroad right-of-way, the utility shall submit to the railroad a notification of intent to construct, along with a specification exhibit that shows the location of the crossing and the railroad's property, tracks, and wires that the public utility's facilities will cross. The notice and exhibit shall be submitted to the railroad by certified mail, return receipt requested. The one-time standard crossing fee of \$750, unless otherwise agreed to by the railroad and public utility, shall accompany the notice and exhibit. The public utility shall use its best efforts to submit the specification exhibit on a form provided or approved by the railroad. The specification exhibit constitutes the public utility's warranty that the public utility facilities that are the subject of the exhibit will be constructed and installed as shown on the exhibit. By August 1, 2003, each railroad, either individually or jointly, shall submit for board review and approval

proposed specification exhibits for use with notifications of intent to construct. The board must also approve any subsequent revisions or amendments to the forms.

42.3(2) Exhibit—overhead wireline crossings. For overhead wireline crossings, the specification exhibit shall contain, at a minimum, the location of the poles supporting the crossing span and adjoining spans on each side of the crossing span on the proposed facilities; the number, kind, and size of wires; and the clearance between the facilities and any existing railroad tracks, wires, or fiber optic lines.

42.3(3) Exhibit—underground crossings. For underground crossings, the specification exhibit shall contain, at a minimum, the number, kind, and size of wires, pipes, and conduit and casing to be used, the commodity conveyed, and the depth to which the public utility facilities will be placed below the base of the rail track and at other locations on the right-of-way. Multiple wires to be contained within a single conduit may be combined on a single exhibit and notice of intent to construct. Both cased and uncased natural gas pipeline crossings shall be provided for on the specification exhibit form or forms.

42.3(4) Authorization to commence construction. After 35 days from the mailing of the notice, specification exhibit, and fee, the public utility, absent a claim of special circumstances or objection from the railroad that the information contained in the specification exhibit is inadequate or incomplete, shall be deemed to have authorization to commence construction of the facilities that are the subject of the specification exhibit. In the event the public utility does not commence construction within 120 days from the mailing of the notice or any changes to the specification exhibit, whichever is later, the notice shall expire and the fee may be retained by the

railroad. If the public utility subsequently desires to proceed with construction of the facilities subject to the notice, the public utility must again comply with the notice, specification exhibit, and fee requirements of these rules.

42.3(5) Crossing notice and payment of flagging costs. In addition to any other required notice, a public utility, except for emergency repair or maintenance, shall provide the railroad written notice at least ten days prior to commencing any construction, maintenance, or repair of facilities within the railroad's right-of-way. Such notice is to enable the railroad to make any appropriate flagging arrangements. The public utility shall reimburse the railroad for actual flagging expenses within 30 days of receipt of a bill for flagging services.

42.3(6) Securing damages—special circumstances. Pending a board resolution of a claim of special circumstances raised in a petition filed by the railroad pursuant to Iowa Code section 476.27(4) and subrule 42.18(2), a public utility may, upon compliance with these rules and securing the payment of an amount sufficient for the removal of any facilities constructed by the public utility in a manner approved by the board, proceed with construction unless the board intervenes to prevent construction pursuant to Iowa Code section 476.27(6).

42.3(7) Inductive interference study. If the railroad reasonably determines through its initial review of the specification exhibit and engineering analysis that a proposed public utility facility has a material possibility of posing an induction problem with railroad property, the public utility, if it wishes to proceed with the facility, shall cause a formal inductive interference study to be performed by a qualified engineer approved by the railroad. The public utility shall make and pay for any modifications

to the proposed facility, or to the railroad's property, that are necessary to ensure safe and reliable operations of the railroad's property that are recommended by the qualified engineer. No public utility facility that has undergone an inductive interference study pursuant to this subrule shall be energized until the railroad has had an opportunity to conduct any appropriate tests to ensure that, after the facility is energized, there will not be any interference with the operation of the railroad's property. Any appropriate tests shall be conducted by the railroad within 30 days after receipt of a notice from the public utility that the facility is ready to be energized.

199—42.4(476) Emergency notice and repairs.

42.4(1) Notice. In the event a public utility or railroad needs to perform emergency or nonroutine maintenance or repair within a railroad right-of-way and the maintenance or repair may affect the operations of the other entity, immediate notification shall be given of the maintenance or repair being performed.

42.4(2) Notification plan filing. Each railroad and public utility with a facility crossing railroad right-of-way shall establish, and file with the board, a mechanism or plan for receiving emergency notifications 24 hours per day, seven days per week.

42.4(3) Scope of emergency work and reimbursement of expenses. Unless permission from the affected railroad or public utility has been received, the railroad and public utility may only perform maintenance or repair work of their own respective property. If the emergency maintenance or repair performed by the railroad or public utility causes reasonable expenses to be incurred by the other entity, those reasonable expenses shall be reimbursed.

199—42.5(476) Relocation of public utility facilities.

42.5(1) Standard for relocation. The railroad may require that the public utility, at the public utility's expense, relocate facilities on railroad right-of-way whenever such relocation is necessary to accommodate railroad operations. The decision that relocation is required is made solely by the railroad, although the railroad may not act arbitrarily or unreasonably. The public utility shall not have to pay a standard crossing fee for such relocations.

42.5(2) Completion of relocation. In the event relocation of facilities is required, the relocation shall be to a location mutually agreed upon by the railroad and utility, within the railroad right-of-way. The relocation shall be completed within a reasonable period of time.

42.5(3) Statement of reasons. Upon the request of the public utility, the railroad shall provide within 15 days a statement or other supporting documentation indicating the operational reasons for requiring relocation of facilities.

199—42.6(476) Engineering standards for electric and communications lines.

These engineering standards apply to crossings that do not involve special circumstances such that additional or more stringent engineering standards may be

warranted. The determination of such additional or more stringent standards will be determined on a case-by-case basis, according to the procedures in subrule 42.18(2), depending on the facts and circumstances associated with the particular crossing.

42.6(1) *General.*

a. Except as provided for in this chapter, electric and communications lines crossing railroads shall be constructed in accordance with 199 IAC 25, the Iowa electrical safety code.

b. Crossings should be made as near as possible at an angle of 90 degrees to the railroad tracks, but in no event shall any crossing be at less than a 60 degree angle to the railroad track.

c. Aboveground facilities at road or pedestrian crossings shall be located or constructed in a manner that minimizes interference with lines of sight for observing oncoming trains.

42.6(2) *Additional requirements for overhead crossings.*

a. In determining the line height needed to meet the clearance requirements of the Iowa Electrical Safety Code, the height of a rail car shall be assumed to be 23 feet.

b. Electric and communications lines shall be installed with at least four feet of clearance above overhead railroad signal and communications lines.

c. The perpendicular distance of poles from the centerline of the tracks shall not be less than the largest of the following:

(1) Unguyed poles shall be located a minimum distance equal to the height of the pole above the ground line plus 10 feet. If guys are installed, they shall be placed in a manner that would prevent the pole from leaning or falling in the direction of the tracks.

(2) Fifty feet near straight tracks, except for industry track where 10 feet is permitted. If located adjacent to curved track, the clearance shall be increased by 1.5 inches per degree of track curvature.

(3) Towers for electric lines capable of operating at 34,500 volts or more shall not be located on railroad right-of-way.

d. Poles shall be located a minimum distance from overhead railroad signal or communications lines equal to the height of the pole above ground line, or must be guyed at a right angle away from such lines.

e. Crossings shall not be installed under or within 500 feet of a railroad bridge, or 300 feet from the centerline of a culvert or switch area.

42.6(3) Additional requirements for underground crossings.

a. The minimum depth below the base of the rail shall be 4.5 feet except for fiberoptic cables, which shall be 5.0 feet.

b. The minimum depth at other locations on the right-of-way shall be:

(1) 5.0 feet for fiberoptic cables;

(2) 4.0 feet for conductors operating at more than 750 volts;

(3) 3.0 feet for all other lines.

c. Crossings shall not be installed within 50 feet of the end of a railroad bridge, the centerline of a culvert, or a switch area.

d. Casings must extend at least 30 feet from the centerline of the nearest track, measured at a right angle, except that casings for electrical conductors operating at more than 750 volts shall extend the full width of the right-of-way. At burial depths of less than 15 feet below the track, the casing material shall be steel or rigid metal conduit. At depths of 15 feet or more, polyvinyl chloride (PVC) casing pipe may be used.

e. Except for the track and ballast area, warning tape shall be installed one foot below ground level over conductors operating at more than 750 volts, except that tape is not required for lines installed using horizontal directional drilling.

f. Bored crossings shall not be installed using water jetting or other methods that might leave cavities beneath a railroad embankment. Horizontal directional drilling techniques that use drilling mud are permitted. Pits for boring or drilling crossings shall be beyond the limits of the railroad embankment.

g. Unless otherwise authorized by the railroad, a railroad representative must be present during installation of buried crossings if there are underground railroad signal lines in the vicinity of the crossing.

199—42.7(476) Engineering standards for pipelines. These engineering standards apply to crossings that do not involve special circumstances such that additional or more stringent engineering standards may be warranted. The determination of such additional or more stringent standards will be determined on a case-by-case basis, according to the procedures in subrule 42.18(2), depending on the facts and circumstances associated with the particular crossing.

42.7(1) General.

a. Except as provided for in this chapter, pipelines crossing railroads shall be constructed in accordance with Part 5, "Pipelines," of the American Railway Engineering and Maintenance-of-Way Association (AREMA) Manual for Railway Engineering - 2001.

b. For pipelines subject to 49 CFR Part 192, "Transportation of Natural and Other Gas by Pipeline," or 49 CFR Part 195, "Transportation of Hazardous Liquids by Pipeline," the appropriate federal standard shall control for pipeline marker signs, valves, corrosion control, welding and weld testing, and pressure testing. The design stress level in such pipelines shall not exceed that permitted by the appropriate federal standard.

c. Polyethylene (PE) pipe may be used as carrier pipe for natural gas pipelines. Polyethylene and polyvinyl chloride (PVC) pipe may be used as carrier pipe for water and wastewater. Such pipe shall be manufactured of materials approved for its intended use by an appropriate standards organization.

d. Slip jointed carrier pipe may be used only for encased water or wastewater pipelines, and the ends of such casings shall be oriented such that drainage from any internal leakage will not endanger the railroad embankment.

e. Casings of material other than steel may be used with railroad company approval.

f. Cathodic protection test boxes located on railroad right-of-way shall be attached to casing vents or installed flush with the ground surface.

42.7(2) *Installation methods.*

a. Pipe shall be installed using boring, drilling, or jacking methods. Open cut crossings are permitted only with the specific authorization of the railroad company.

b. Pits for boring or jacking shall not disturb the railroad embankment and shall be located at least 30 feet from the track centerline where practical. Pits shall be of the minimum size necessary.

c. Bored crossings shall not be installed using water jetting or other drilling methods that might leave cavities beneath a railroad embankment. Horizontal directional drilling techniques that use drilling mud are permitted.

d. Pipe or casing shall be installed with at least one foot of separation from any other pipe or wire in the right-of-way.

e. When boring for pipe greater than 20 inches in diameter is proposed, and the pipe would be installed less than 10 feet below the base of the rail, if the railroad has knowledge of soil conditions in the vicinity which could lead to deterioration of track support if the soil is disturbed, the railroad company may require that a geotechnical study be performed by the public utility to determine if the proposed crossing site is undesirable or requires special construction methods or monitoring.

f. For unusually large pipeline crossings that do not involve special circumstances, or for crossings where geotechnical study has identified potentially destabilizing soil conditions, the railroad company may require that a railroad representative be present during installation, and may also require the presence of a survey crew to monitor the tracks for any change in alignment.

199—42.8(476) Liability. The railroad and public utility shall each maintain and repair their respective property within the railroad right-of-way, and the railroad and

public utility shall bear responsibility for each person's own acts and omissions, except the public utility shall be responsible for any bodily injury or property damage that typically would be covered under a standard railroad protective liability insurance policy.

199—42.9(476) Insurance. Unless otherwise agreed upon by the railroad and public utility, the public utility shall maintain, or cause to be maintained, the following minimum insurance coverage with respect to each railroad crossing:

42.9(1) General public liability insurance with limits of not less than \$500,000 for injury or death of a single person, or not less than \$1 million for any one accident, and not less than \$250,000 per accident for property damage. The exclusion or limitations for railroads shall be removed.

42.9(2) Comprehensive automobile liability insurance with limits of not less than \$500,000 for injury or death of a single person, or not less than \$1 million for any one accident, and not less than \$250,000 for property damage.

42.9(3) Excess liability coverage with limits of not less than \$5 million.

42.9(4) Railroad protective liability insurance with a combined single limit of \$4 million per occurrence and \$6 million aggregate. Such coverage may be provided by a blanket insurance policy, provided that the coverage, including the coverage limits, applies to each individual crossing on each individual railroad.

42.9(5) The coverage in 42.9(1) through 42.9(3) above must be by blanket insurance policies covering other property or risks, or self-insurance. In the event the public utility desires to self-insure, it must maintain a minimum long-term rating of A- and net assets of not less than \$100 million, unless the railroad agrees to different

amounts. If the public utility's long-term rating is lowered below an A- rating, the public utility will provide commercial insurance as required in this rule, and will notify the railroad that its long-term rating was lowered below A-.

42.9(6) The coverage in 42.9(1) through 42.9(4) must be in place prior to the commencement by the public utility of any work within the railroad's right-of-way in order to secure payment for any damages for which the public utility bears responsibility.

199—42.10(476) Removal of equipment. Upon completion of any facility, the public utility shall remove, or cause to be removed, all tools, equipment, or other property used in the construction and, if railroad property was moved or disturbed, restore that property to the same condition it was in prior to being moved or disturbed.

199—42.11(476) Assignment. The public utility may assign or otherwise transfer any rights to cross railroad right-of-way to any financially responsible entity controlled by, controlling, or under common control with the public utility or to any entity into or with which the public utility is merged or consolidated or which acquires ownership or control of all or substantially all of the transmission assets of the public utility. Notice of the assignment or transfer shall be given to the railroad within 30 days. No other transfer or assignment may take place without the written permission of the railroad, which permission shall not be unreasonably withheld.

199—42.12(476) Prohibition against mechanic's liens. The public utility shall not create, permit, or suffer any mechanic's lien or other lien of any kind or any nature to be created or enforced against the railroad's property for any work performed by the

public utility in connection with its facilities that are located in the railroad's right-of-way. The railroad shall not create, permit, or suffer any mechanic's lien or other lien of any kind or any nature to be created or enforced against the public utility's property located in the railroad's right-of-way for any work performed by the railroad in connection with the railroad's facilities.

199—42.13(476) Taxes. The public utility shall promptly pay or discharge all taxes and charges levied upon its facilities located in the railroad's right-of-way. Where any such tax or charge may not be separately made or assessed to the public utility, but is included in the taxes or charges assessed to the railroad, the public utility shall pay to the railroad an equitable portion of such taxes determined by the value of the public utility's facilities located on railroad right-of-way as compared with the entire value of the railroad property.

199—42.14(476) Protection of signal systems. Prior to penetrating the surface of any railroad right-of-way, the public utility shall contact the railroad to determine if any of the railroad's signal systems are located in the area. If signal systems are located in the area, the public utility, at its expense, shall arrange for a cable locator and make arrangements for relocation or other protection of the signal system. The public utility shall also contact Iowa One-Call for locating other underground facilities and shall comply with all other applicable statutes, regulations, and rules pertaining to such underground facilities.

199—42.15(476) Safety regulations. The public utility shall ensure compliance with all applicable local, state, and federal safety rules and regulations during the time any work is being performed on a facility within the railroad's right-of-way. Any personal

injury arising during work being performed on a facility shall be promptly reported by the public utility to the railroad.

199—42.16(476) Recording. The public utility, at its own expense, may record a memorandum of its rights pursuant to Iowa Code section 476.27 and these rules. A legal description of the crossing that has been approved by both the railroad and public utility shall be attached to the memorandum. Upon termination of the public utility's rights, the public utility shall file an appropriate document to evidence such termination.

199—42.17(17A,476) Complaints and petitions for relief—general information.

These rules are promulgated under Iowa Code chapter 17A and Iowa Code section 476.27 as guides for procedure when railroads or public utilities file with the board complaints regarding crossings pursuant to Iowa Code section 476.27(2)"a"(9) or petitions for relief pursuant to Iowa Code section 476.27(4). The purpose of these rules is to facilitate the transaction of business before the board and to promote the just resolution of controversies. Consistent with this purpose, any of these rules, unless otherwise provided by law, may be waived by the board or its designated presiding officer pursuant to rule 199—1.3(17A,474,476,78GA,HF2206). The board recognizes that the parties will ordinarily require expedited procedures and a swift decision. Therefore, any procedural rules in 199—Chapter 7 that are in conflict with these rules do not apply to contested cases under this chapter.

199—42.18(17A,476) Filing of complaint or petition.

42.18(1) Complaints. A railroad or public utility that has a complaint regarding any of the issues identified in Iowa Code section 476.27(2) that cannot be resolved

without intervention by the board may file a complaint with the board. The complainant must serve the other railroad or public utility involved and the consumer advocate, either in person or by overnight delivery, on the same day the complaint is filed with the board. The complaint must be in writing and must include the following:

- a. The name, address, telephone number, and contact person for the complainant and the complainant's attorney, if any;
- b. The basis for the board's jurisdiction over the matter;
- c. A statement of the complainant's position and a detailed discussion of the facts that support the complainant's position, including a description of the issues involved, the resolution requested, and the facts supporting the resolution requested;
- d. The particular provisions of the statutes and rules involved;
- e. A description of the attempts made to informally resolve the complaint;
- f. All documentation relied on to support the facts alleged in the complaint and the requested resolution; and
- g. The name, address, telephone number, and contact person and attorney, if any, for the other railroad or public utility involved and a statement that the complaint was served on the other railroad or public utility involved and the consumer advocate, the method of service, and the date served.

42.18(2) *Petitions for relief.* A railroad or public utility that believes special circumstances exist for a particular crossing pursuant to Iowa Code section 476.27(4) may file a petition for relief with the board if the railroad and the public utility have been unable to resolve their differences without intervention by the board. The petitioner must serve the other railroad or public utility involved and the consumer

advocate, either in person or by overnight delivery, on the same day the petition is filed with the board. The petition must be in writing and must include the following:

- a. The name, address, telephone number, and contact person for the petitioner and the petitioner's attorney, if any;
- b. The basis for the board's jurisdiction over the matter;
- c. A statement of the petitioner's position and a detailed discussion of the facts that support the petitioner's position, including a description of the issues involved, why special circumstances exist for the particular crossing, the relief requested, and the facts supporting the relief requested;
- d. The particular provisions of the statutes and rules involved;
- e. A description of the attempts made to informally resolve the issues involved in the petition;
- f. All documentation relied on to support the facts alleged in the petition and the requested relief; and
- g. The name, address, telephone number, contact person and attorney, if any, for the other railroad or public utility involved and a statement that the petition was served on the other railroad or public utility involved and the consumer advocate, the method of service, and the date served.

199—42.19(17A,476) Presiding officer. The presiding officer who conducts the contested case hearing on the complaint or petition may be one or more members of the board or a qualified person designated by the board. The presiding officer has the authority granted by the board as specified in 199-subrule 7.1(4) and given by statute.

199—42.20(17A,476) Answer. Upon receipt of a complaint filed pursuant to subrule 42.18(1), or a petition for relief filed pursuant to subrule 42.18(2), the railroad or public utility must file an answer with the board. The railroad or public utility must serve the answer upon the other railroad or public utility involved and the consumer advocate, either in person or by overnight delivery, on the same day the answer is filed with the board. The answer must be filed within ten days of the date of service of the complaint or petition.

42.20(1) The answer must be in writing and must include the following, at a minimum:

- a. The name, address, telephone number, and contact person for the respondent and the respondent's attorney, if any;
- b. An admission or denial of each allegation in the petition;
- c. A statement of the respondent's position and a detailed discussion of the facts that support the respondent's position, including a description of the issues involved, the resolution or relief requested, and the facts supporting the resolution or relief requested;
- d. A description of the attempts made to informally resolve the complaint or the issues involved in the petition;
- e. All documentation relied on to support the facts alleged in the answer and the requested resolution or relief; and
- f. A statement that the answer was served on petitioner or complainant and the consumer advocate, the method of service, and the date served.

42.20(2) Failure to file a timely answer may be deemed a default and, upon motion and absent objection by the consumer advocate, the resolution or relief requested by the moving party may be granted. On motion and for good cause shown, the presiding officer may set aside a default order. The motion to set aside must be filed promptly, and in no case more than ten days after issuance of the default order.

199—42.21(17A,476) Parties and appearances. The parties include the petitioner or complainant, the respondent, the consumer advocate, and any intervenors. Each party must file a written appearance at the earliest possible time identifying one person upon whom the board and the other parties may serve all orders, correspondence, and other documents.

199—42.22(17A,476) Procedural order and notice of hearing. Upon receipt of a complaint or petition filed pursuant to rule 199— 42.18(17A,476), the presiding officer will prepare and issue a procedural order and notice of hearing. Prefiled testimony will not be used unless deemed necessary by the presiding officer, or unless requested by the railroad and public utility involved or the consumer advocate. In scheduling the hearing, the presiding officer will consider the schedules of the parties involved and will schedule the hearing as soon as possible. However, the hearing will not be scheduled earlier than seven days after the answer is due to be filed. The procedural order and notice of hearing will be served by ordinary mail upon the parties.

199—42.23(17A,476) Discovery. Discovery procedures available to parties in civil actions are available to the parties. However, because of the expedited nature of

these proceedings, all responses must be given within five days of receipt of any request, and all discovery requests must be delivered so that discovery is completed at least five days prior to the date set for hearing. Parties must make good-faith efforts to resolve discovery disputes before filing any motion relating to discovery.

199—42.24(17A,476) Hearing procedures.

42.24(1) All hearings will be recorded either by mechanized means or by certified shorthand reporters. All testimony will be taken under oath or affirmation.

42.24(2) If a party fails to appear at a hearing after proper service of the notice of hearing, the presiding officer may, if no adjournment is granted, enter a default decision or proceed with the hearing and make a decision in the absence of the party. The parties will be notified of the decision by ordinary mail. If adequate reasons are provided showing good cause for the party's failure to appear, the presiding officer may vacate the decision and, after proper service of notice, conduct another hearing and issue a decision.

42.24(3) The presiding officer shall maintain the decorum of the hearing, and may refuse to admit, or may expel, anyone whose conduct is disorderly, contemptuous, or disruptive.

42.24(4) Subject to terms and conditions set by the presiding officer, each party has the right to introduce evidence, cross-examine witnesses, present evidence in rebuttal, and present oral argument. The presiding officer will determine the order for the presentation of evidence. Prior to or at the hearing, the parties must alert the presiding officer if circumstances exist that require expedited issuance of the decision.

42.24(5) A party that wishes to present a brief must file it prior to or at the hearing.

42.24(6) A party that wishes a shortened appeal time must make a motion at the hearing. If there are no objections, and there are no issues that indicate the need for a 15-day appeal period, the presiding officer may shorten the time for appeal set forth in 199— subrule 7.8(2).

199—42.25(17A,476) Decision. The presiding officer will issue a decision as soon as possible after the conclusion of the hearing. If the board issues the decision, it is final agency action. If a single presiding officer issues the decision, it is a proposed decision, and the rules applicable to appeals from the decision of a presiding officer at rule 199—7.8(476) apply, except that the appeal time may be shortened at the discretion of the presiding officer, and all times set forth in rule 199—7.8(476) may be shortened at the discretion of the board.

These rules are intended to implement Iowa Code sections 476.1, 4761A, 4761B. and 476.27.

May 2, 2003

/s/ Diane Munns

Diane Munns
Chairman